HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.17853 of 2006

Date:21st December, 2006

Between :-

M/s.Dr.Ambedkar Seva Samajam
Ambedkar Bhavan, Akberpet,
Bapatla, Guntur District, rep. by
Its General Secretary Sri M.Jaya Rao
And 9 others .. Petitioners

And

The Government of Andhra Pradesh
Rep. by its Secretary,
Department of Municipal Administration,
Secretariat, Hyderabad and 8 others ..
Respondents

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.17853 of 2006

ORDER:

1. **Episode in short**: M/s.Dr.Ambedkar Seva Sangham, Ambedkar Bhavan, Akberpet, Bapatla, Guntur District, represented by its General Secretary M.Jaya Rao and certain others filed the present Writ Petition praying for issuance of a writ of quo warranto against the 9th respondent on the ground that the 9th respondent had usurped the office of the Chair-person of Bapatla Municipality and also the office of Municipal Councillor of 8th Ward of the said Municipality on the ground that the said 9th respondent belongs to Scheduled Caste though in fact he does not belong to Scheduled Caste at all, but belongs to B.C. 'C' (Mala) converted to Christianity.

2. Several factual details are narrated in the respective pleadings of the parties. This Court issued Notice Before Admission initially on 28-8-2006 and issued rule nisi on 7-9-2006. Inasmuch as the contesting respondents had put in their respective pleadings, the counter affidavits, the Writ Petition is being finally disposed of.

3. **W.P.M.P.No.23998/2006:** This application is filed by

the writ petitioners praying this Court to receive a copy of the report of the Inspector of Police, CID, RCIU, Guntur dated 21-8-2006 and pass such other suitable orders. Certain factual details are narrated in the affidavit filed in support of the application in paras 2 to 5 and it is stated that the 1st petitioner-Association also had submitted a representation to the A.P. Scheduled Castes and Scheduled Tribes Commission with respect to the fraud played by the 9th respondent and the said Commission forwarded the same to Inspector General of Police, Cell for Protection of civil rights and consequently an investigation was made through the Inspector of Police, CID, RCIU, Guntur and the said officer after investigation submitted report on 21-8-2006 to the Additional Director General of Police, CID, A.P., Hyderabad recommending for registering a case against the 9th respondent and it is further stated that the said report would establish the fact of playing fraud by the 9th respondent and hence the same may be relevant.

4. In the facts and circumstances of the case, this Court is of the considered opinion that the application to be ordered and accordingly the same is hereby ordered. However, the question how far the said report may be looked into would be discussed at the appropriate stage.

Pleadings in brief: The pleadings of the parties in brief are as hereunder:-

5. The writ petitioners pleaded that the 1st petitioner-Association registered under the Societies Registration Act 1981 with Registration No.99/81 and the main objects of the said Society among others are to promote the welfare, provide for education, protect the rights, to work for the upliftment of the Scheduled Castes among other Castes in weaker sections of the Society. It is also averred that the other petitioners are the residents and voters of the said Bapatla Municipality hailing from various wards including Ward No.8. It is also further stated that the 1st respondent exercising powers under Section 23 of A.P. Municipalities Act r/w. Rules 3 and 12 of A.P. Municipalities (Reservation of Offices of Chairperson in Municipal Councils and Nagarpancayats) Rules 1995 issued notification thereby specifying the Municipalities and Nagarpanchayats reserved for the members belonging to the Scheduled Tribes, Scheduled Castes, Backward Castes and Women for election to the offices of Chairpersons of the said Municipal Council and Nagar Panchayats vide G.O.Ms.No.759 dated 18-8-2005. By the said, notification among others, the Bapatla Municipal Council was reserved for the candidates belonging to Scheduled Caste. The said reservations were made pursuant to the Constitutional mandate provided under Article 243T of the Constitution of India. It is also further stated that exercising the powers

under Article 243-K and 243-ZA of the Constitution of India, the 2nd respondent herein, the State Election Commission issued notification dated 29-8-2005 notifying the election to the Bapatla Municipal Council and published the programme for the said elections. The polling for election to the wards was fixed as 24-9-2005 and the election to the office of the Chairperson was fixed as 30-09-2005. The 9th respondent who belongs to the 8th Ward filed nomination for the election as a member of the Council claiming himself as a candidate belonging to Scheduled Caste by describing his caste as Mala which is one of the castes specified in the Constitution (Scheduled Castes) Order 1950 issued under Article 341(1) of the Constitution of India. Three other candidates belonging to Schedule Caste also filed nomination for the said 8th Ward. The 9th respondent got elected as a Councillor in the said election held on 24-9-2005. It is also stated that thereafter he obtained nomination from Indian National Congress as its party nominee for the office of the Chairperson of the Bapatla Municipal Council and also got elected as the Chairperson on 30-9-2005. Further a stand is taken that the 1st petitioner Association came to know that the 9th respondent belongs to B.C. 'C' category as he was Mala converted to Christianity and for past two generations his family was professing Christianity and on the said basis he obtained employment

in the then A.P. State Electricity Board (presently Southern Power Distribution Company of A.P. Ltd.) and after obtaining several benefits for himself in and outside the service claiming to belong to Backward Class (Category-C) retired on 31st June 2003. It is also averred that the petitioners gathered the service particulars of the 9th respondent and documents, namely, (i) Xerox copy of service roll of the 9th respondent and (ii) Seniority list of Assistant Linemen of Tenali Division of the said Southern Power Distribution Company of A.P. Ltd. showing the name of the 9th respondent at Sl.No.9. These documents clearly disclose that the 9th respondent is a Mala converted to Christianity and that he belongs to Backward Class (Category-C) respectively and thus confirming that the 9th respondent belonged to Backward Class (C-Category). It is further stated that the petitioners made further enquiries and found that in August 2005 the 9th respondent obtained caste certificate from Mandal Revenue Officer, Bapatla, the 8th respondent, representing that he belongs to Mala which is a caste specified in the Constitution (Scheduled Castes) Order 1950 issued under Clause 1 of Article 341 of the Constitution suppressing the above said factum that he belongs to Backward Class (Category-C). The 1st petitioner-Association submitted a representation dated 22-

3-2006 to the Superintendent of Police, Guntur narrating the said facts. On 14-4-2006 on the occasion of Dr.Ambedkar Jayanthi the 1st petitioner-Association also submitted representations to several authorities requesting them to initiate action against the 9th respondent and to uphold the Constitutional objects for which the office of local Self Governments are reserved for weaker sections. The said fact was widely reported in the local newspapers and all the local T.V. and cable channels. Further it is stated that another Association from Guntur, The Removal of State Communal Untouchability Struggle Association, registered under the Societies Registration Act, also had called for the removal of 9th respondent as he had usurped the said offices by playing fraud on 16-4-2006 and the said fact also was widely reported in the local newspapers. It is also further averred that on 27-4-2006 majority of the members of Bapatla Municipal Council had submitted written representation to the Commissioner, Bapatla Municipality, the 6th respondent herein, refusing to attend the meeting scheduled for that day on the ground that Municipal Council cannot function under the said 9th respondent as Chairperson as he had usurped the office by fraud and also requested to record the same in the minutes of the meeting and communicate the same to higher authorities for necessary action. Thereafter the 9th

respondent had used the services of third party individuals with criminal background, who entered the meeting hall and abused orally and physically the said members who submitted the said representation. These incidents had been recorded and shown in the local Citi cable news cannel and the photographs had also been published in the local newspapers. It is further stated that requesting criminal action against the said incidents a representation dated 3-5-2006 was submitted by the said members to the 6th respondent marking copies to the 3rd and 4th respondents and no action had been taken in this regard. In the circumstances the said members lodged a complaint with the local police and even on this there was no action. Further it is stated that the members belonging to the all the political parties also had organized rastha rook and the same also was widely reported. The 1st petitioner-Association had submitted a representation on 17-4-2006 to the A.P. State Commission for Scheduled Castes and Scheduled Tribes with respect to the said action of the 9th respondent and the Commission in turn by its proceedings dated 19-4-2006 forwarded the same to the 4th respondent herein, the District Collector, for necessary action. Further, it is averred that on 18-4-2006 the 1st petitioner-Association also submitted a representation to the 4th respondent

nomenclating the same as a complaint under Section 5 r/w. Section 12 of A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act (Act No.16 of 1993) with respect to the said Act of the 9th respondent, but it is reliably learnt that till date no action had been initiated by the 4th respondent either on the representation dated 18-4-2006 of the 1st petitioner nor on the proceedings of the said A.P. State Commission for Schedule Castes and Schedule Tribes. It is further stated that the 1st petitioner-Association also submitted an application on 18-4-2006 under the Right to Information Act 2005 (Act No.22 of 2005) to the Mandal Revenue Officer, the 8th respondent herein seeking for copies of (i) Application made by the 9th respondent in the month of August 2005 for issuing a caste certificate describing as person belonging to Schedule Caste; (ii) Documents enclosed to the said application for substantiating his claim as Schedule Caste; (iii) Previous certificate if any issued to the 9th respondent and (iv) Caste certificate issued to the 9th respondent pursuant to the said application made in the month of August 2005. It is also further averred that upon receipt of the said application the 8th respondent knowing fully well from the local news papers and the electronic media that the said copies had been sought for a larger

public interest and that the said larger public interest justifies the disclosure of the information sought still taking shelter under Section 8(j) and 11(1) of the Act No.22 of 2005, refused to issue the said copies by proceedings dated 3-5-2006. From a perusal of the said proceedings it is also evident that the 8th respondent issued a notice to the 9th respondent on the said application and received and considered his objections. Further it is averred that aggrieved by the said proceedings of the 8th respondent dated 3-5-2006 the 1st petitioner-Association filed an appeal under Section 19 of Act No.22 of 2005 to the Revenue Divisional Officer, the 7th respondent herein, on 10-5-2006. It is further stated that in the first week of May itself, the complaint dated 18-4-2006 lodged by the 1st petitioner with the 4th respondent under Act No.16 of 1993 has reached the 7th respondent and he is aware of the entire issue. In spite of the same, the 7th respondent in stead of calling for the entire file from the 8th respondent and issue the copies as applied for, issued proceedings dated 11-5-2006, signed after 16-5-2006, thereby directing the 1st petitioner to submit the copy of the proceedings of the 8th respondent dated 3-5-2006 against which the Appeal had been filed. Though the 1st petitioner immediately submitted the said copy, till date

no action had been taken by the 7th respondent. It is further averred that the 1st petitioner-Association also submitted another application dated 18-4-2006 under the Right to Information Act 2005 to the Public Information Officer-cum-Municipal Manager of Bapatla Municipality seeking for copies of (i) documents submitted by the 9th respondent at the time of the nomination in the month of September 2005 and (ii) Caste certificate filed by the 9th respondent at the time of filing of nomination. Further it is stated that the Public Information Officer-cum-Municipal Manager of Bapatla Municipality by proceedings dated 1-5-2006 informed the 1st petitioner-Association that on 18-4-2006 itself he had sought the permission of the Director of Municipal Administration, the 3rd respondent herein, for issuing the said copies and that he is awaiting the same for issuing the copies. Thereafter on verification by the 1st petitioner with the office of the 3rd respondent it came to be known that no such letter was addressed seeking the permission. Thereupon the 1st petitioner-Association brought to their notice about the letter dated 1-5-2006 of the Public Information Officer-cum-Municipal Manager of the Bapatla Municipality and consequently the office of the 3rd respondent called for the letter dated 18-4-2006 from the said Public Information Officer-cum-Municipal Manager of the Bapatla Municipality

by which he had sought the permission to issue the copies applied for and in turn addressed letter to the 3rd respondent seeking its permission for issuing the said copies, but no action was taken in this regard till date. It is also further stated that the 1st petitioner also submitted an application o 19-4-2006 under the Right to Information Act 2005 (Act No.22 of 2005) to the Public Information Officer-cum-the Divisional Electrical Engineer Technical, APSPDCL, Guntur seeking among other details the service particulars of the 9th respondent with respect to (a) Educational qualifications as on the date of joining the service and (b) Caste and community marked in the service register. It is stated that consequent to the said application the Public Information Officer-cum-the Divisional Electrical Engineer Technical, APSPDCL, Guntur knowing fully well from the local news papers and the electronic media that the said copies had been sought for a larger public interest and that the said larger public interest justifies the disclosure of the information sought and the issuing of the copies sought still taking shelter under Sections 8(j) and 11(1) of the Act No.22 of 2005 refused to issue the said copies by the proceedings dated 9-5-2006. From a perusal of the said proceedings it is evident that a notice was also issued to the 9th respondent on the said application and received his objections and considered the same. Aggrieved by the said proceedings of

the Public Information Officer-cum-the Divisional Electrical Engineer Technical, APSPDCL, Guntur dated 9-5-2006 the 1st petitioner-Association filed an appeal under Section 19 of Act No.22 of 2005 to the Superintending Engineer of APSPDCL on 23-5-2006. The said Appeal was also disposed of by proceedings dated 16-6-2006 thereby refusing to issue the copies by upholding the reasons given by the original authority. From the above said facts it is evident that though all the officials are fully aware of the larger public interest involved in issuing the said copies under the said Act No.22 of 2005 still the original and the appellate authorities thereunder had been refusing to issue them taking shelter under Sections 8(j) and 11(1) though the very same provisions provide for issuing the said copies to justify the larger public interest and there can be no larger public interest than protecting the Constitution from fraud in question. In fact this conduct of all these authorities is legally mala fide action. Certain other factual details also had been narrated and the relief of quo warranto was prayed for inasmuch as it is stated that the 9th respondent had played fraud on the Constitution by occupying the respective offices the which he has no right to occupy at all.

6. The 2nd respondent filed counter affidavit wherein specific stand was taken in para-4 that two remedies are open to the petitioner. One remedy is to file an

election petition within 15 days of the declaration of the result of the election before the Election Tribunal constituted under the A.P. Municipalities (Decision of Election Disputes) Rules, 1967. The other remedy is to file a complaint before the District Collector under Section 5 of the A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 for the cancellation of the Schedule Caste Certificate granted by the 8th respondent. Once the Certificate is cancelled the 9th respondent will automatically cease to hold the office under Section 16(1)(aa) of A.P. Municipalities Act 1965. Further it is averred in para-5 of the counter affidavit that under Section 343-ZA of the A.P. Municipalities Act no election held under the A.P. Municipalities Act shall be called in question except by way of an election petition presented in accordance with such rules as may be made for the purpose. Without availing this statutory remedy the petitioner has now filed a Writ Petition for a writ of quo warranto in which the subject matter of dispute to be settled before issuing the writ of quo warranto is the legality or otherwise of election of the 9th respondent. The remedy sought is therefore one which circumvents the law enacted in Section 343ZA of the aforesaid said Act and is therefore not available to the petitioner. It is further stated that in a plethora of decisions, the Hon'ble Supreme Court clearly

ruled that where a special forum is constituted for election disputes, only that forum has to be approached and therefore a writ of quo warranto does not lie.

7. In the counter affidavit filed by the 6th respondent it is averred that the Government through G.O.Ms.No.759, Municipal Administration and Urban Development Department dated 18-8-2005 had issued notification duly notifying the election to Chairperson, Bapatla along with other Municipalities reserved for S.C. (General). Accordingly notification was given calling for election to 34 Ward Members of Bapatla Municipality in accordance with the instructions issued by the State Election Commission, Hyderabad and the election authority/Commissioner & Director of Municipal Administration Department, Andhra Pradesh, Hyderabad. The entire election process was done in accordance with the day wise programme fixed by the State Election Commission, Secunderabad. It is also further averred in para-4 that the District Collector and District Election Authority, Guntur has finalized reservation in various wards reserved for S.T., S.C. and B.C. duly following the guidelines issued by the State Election Commission, Secunderabad. The reservation of various Wards is as follows published through District Gazette No.LVII, dated 22-8-2005 of Guntur.

General	Women	Total No. of Wards
6,15,16,17,23,24,30,31,33 & 34	18,19,20,25,26 & 28	11+6=17
SC General	Women	Total No.of Wards
8,10,12	1,32	5
S.T. General	Women	Total No.of Wards
22	-	1
B.C. General	Women	Total No.of Wards
4,3,13,14,11,29 & 5	9,27,2,7	11

Further it is stated that the polling date for Municipal Elections was fixed on 24-9-2005 and to the election of Chairperson was fixed on 30-9-2005 by the State Election Authority, Secunderabad. Further it is stated in para-6 of the counter affidavit that the 9th respondent in the Writ Petition had filed nomination to 8th Ward Member along with other candidates duly enclosing the required certificates as per norms and submitted nomination before the Assistant Election Officer appointed by the District Election authority through proceedings R.O.C.No.2595/2005/A3, dated 27-8-2005 six candidates belonging to various political parties have filed nominations to the ward member election of 8th Ward which was reserved to S.C. General duly enclosing the required certificates to the nomination forms. Out of them four candidates contested in the election and two

candidates had withdrawn their candidature. The poll was conducted on 24-9-2005 and counting of votes on 26-9-2006 along with other 33 wards of Bapatla Municipality since 9th ward had been declared as unanimous on the day of scrutiny of nominations itself. Out of the contested candidates of Ward No.8 the 9th respondent namely Sri Kurapati Mariyadas of Indian Nation Congress had secured highest number of votes-564 out of polled votes-1024. Further it is pleaded that after completion of poll process a meeting was convened by the Special Officer on 30-9-2005 with the newly elected body representatives to elect Chairperson & Vice Chairperson and a majority of ward members had raised their hands in favour of Sri K.Mariyadas as Chairperson. Thereby the said individual had been elected and declared as Chairperson through indirect election and he is continuing as Chairperson, Bapatla Municipality with effect from 30-9-2005 till date. Further it is stated that on 18-4-2006 M.Jaya Rao, Joint Secretary of Dr.Ambedkar Seva Samajam, Bapatla requested the office to furnish the particulars/enclosures of nomination form filed by Sri K.Mariyadas, 8th Ward member at the time of nominations to the ward member election, such as caste certificate and declaration with regard to criminal cases involvement previously by the candidates by paying Rs.50/- through Ch.No.234 dated 19-4-2006 under

Right to Information Act 2005. Further it is pleaded that an ordinary meeting was called for by the 9th respondent on 27-4-2006. On the date of commencement of the meeting 19th ward members gave a request application to adjourn the meeting duly stating in writing that the Chairperson had misguided the office by submitting the false caste certificate and they are not willing to participate in the said meeting. Out of 19 members 10th ward member had also signed in the application without attending the said meeting. There are two co-opted members signatures in the application. Two other ward members though they had signed in the application but presented to the meeting.

Attended ward members	: 33
Co-option members	: 3
Total attended	: 36
Ward members signed in the application	: 19
Balance ward members presented in the meeting	: 17
Add two ward members signed in the application	: 2
Add one co-option member	: 1
Total	: 20

The meeting was convened with a quorum of 20 members. Since the 1/3rd quorum is completed the meeting is scheduled and completed without ay obstacles as stated by the petitioner. Immediately after the closure of the meeting the matter was reported to the Regional Director-cum-

Appellate Commissioner of Municipal Administration Department, Guntur and District Collector, Guntur. Specific stand is taken in para-10 of the counter affidavit that the petitioner-Association submitted an application on 18-4-2006 under Right to Information Act 2005 to the Public Information Officer-cum-Municipal Manager of Bapatla Municipality requesting for issue of copies of documents submitted by 9th respondent at the time of nomination in the months of September 2005 including Caste certificate. It is further averred in para-11 that the P.I.O./Office Manager, Bapatla Municipality issued endorsement dated 1-5-2006 to the 1st petitioner duly informing that the plea of the petitioner is referred to the competent higher authorities for issuing necessary clarification through Lr.Roc.No.3652/2005/C1 dated 18-4-2006 since there is no provision to open the nomination and other election related papers kept under safe custody of sub-treasury officer, Bapatla under Rule 96(1)(B) unless there is an order of competent court to do so. The 1st petitioner also informed that the required information will be given to him as and when permission was received from higher authority. The 1st petitioner had not approached the officer by way of Appeal before the appellate authority in this regard. The request of the petitioner was referred to the State Election Commission, Commissioner and Director of Municipal Administration,

A.P., Hyderabad seeking necessary permission. The Commissioner and Director of Municipal Administration through the instructions R.O.C.No.7683/2006/Elec-2, dated 30-6-2006 had directed the Municipal Commissioner to give an endorsement to the General Secretary of Dr.Ambedkar Seva Samajam, Bapatly duly quoting the rule position. The State Election Commission, Secunderabad through Lr.No.310/SEC/F2/2006 dated 17-8-2006 had informed that "The information contained in the declaration was intended to the electors to judge antecedents, financial status and educational qualifications of candidates so that they may choose desirable candidates and that stage had passed. At this stage only personal information has no relationship to any public activity. Therefore there is no obligation to supply this information to the applicant. The information in the declaration cannot be used for collateral purposes by private parties. However if an appeal is filed by the petitioner under Section 19 of Right to Information Act 2005 and the appellate authority orders giving of the copy of declaration then they have a fresh look at the matter and that in case the appellate authority want us to supply the information, we may supply to the same under the said authority, if we so decide". Further it is stated that there is malaise intention as stated by the petitioners except with an intention not to deviate the rules clearly by election related matters. After completion of the election process all the

important papers pertaining to this election had been kept in a seal and secured safe custody. It is further averred that while submitting the nomination papers to contest as Ward No.8 of Bapatla Municipality the 9th respondent enclosed caste certificate dated 17-8-2005 as he belongs to S.C. (Mala) issued by Mandal Revenue Officer, Bapatla since Ward No.8 is reserved for S.C. (General). The election process was successfully completed as per the directions of the State and District election authorities without giving any room for complaints. The particulars of all the contesting candidates had been displayed in the notice board before commencement of poll date. No objections were received in the matter before and after declaration of the election results. Even on the date of scrutiny of nomination i.e., 6-9-2005 no objection is received against the candidature of Sri K.Mariyadas. His nomination is accepted basing on the strength of caste certificate issued by Mandal Revenue Officer, Bapatla and other certificates produced by the individual. No election petition was filed in any of the Courts within a period of 15 days after declaration of election results. The present Writ Petition is filed with malaise intention. The petitioners have made this representation with a malaise intention and to create unnecessary hurdles in administration. Further specific stand is taken that in stead of approaching the Election Tribunal questioning the

election, the petitioners had approached this Court and hence prayed for dismissal of the Writ Petition.

8. The 7th respondent filed counter affidavit taking a stand that it is not true to allege that the 4th respondent-District Collector, Guntur had not taken any action on the petition dated 18-4-2006. The District Collector, Guntur had directed the Revenue Divisional Officer, Tenali-7th respondent to enquire into the matter and send a detailed report. Accordingly the Revenue Divisional Officer-7th respondent had enquired into the matter and submitted report to the District Collector. Further specific stand is taken that it is not true to say that the 1st petitioner had filed before the 7th respondent a copy of letter dated 3-5-2006 said to have been issued by the Mandal Revenue Officer, Bapatla to him. The fact is that the petitioner M.Jaya Rao filed an appeal petition against the order of the Mandal Revenue Officer, Bapatla dated 3-5-2006 without enclosing the order under the provisions of Right to Information Act. The appellant was given an endorsement to file a copy of the order of the Mandal Revenue Officer, Bapatla but it was not filed by the petitioner. It is further stated that suitable action will be taken on the appeal petition filed by the petitioner soon after he filed a copy of letter/order said to have been issued to him by the Mandal Revenue Officer, Bapatla. The *mala fide* intention alleged had been denied.

The allegations in para-33 of the affidavit filed in support of the Writ Petition also had been denied, but it is averred that in fact the 7th respondent requested the petitioner to file a copy of the letter dated 3-5-2006 said to have been issued to him by the Mandal Revenue Officer, Bapatla for taking further action on his appeal petition. But he had not filed the above document before the 7th respondent so far.

9. The 9th respondent filed a counter affidavit substantially denying the allegations. The averments made in para-10 of the affidavit filed in support of the Writ Petition had been denied. Regarding the averments in para-12 it is stated that the 9th respondent obtained a caste certificate from the Mandal Revenue Officer, Bapatla representing that he belongs to Hindu (Mala) which is a caste specified in Constitution (Schedule Castes) Order 1950 under Clause (1) of Article 341 of the Constitution suppressing the fact that he belongs to B.C. 'C' category are not true and correct. It is also stated that in reply to the averments made in para-16 of the affidavit that on that day the opposition wanted to disturb the Council meeting but as there was attendance of quorum of 19 members the proceedings were conducted. Further it is stated that the allegations made against several authorities in other paras of the petition and the orders in question are not with the knowledge of the 9th respondent

and they are within the framework of the concerned statutes to be pursued by the petitioners for the required remedies, if any. Further, it is averred that the 9th respondent was born at Peda Vadlapudi village of Mangalagiri Mandal of Guntur District in the family of Caste Mala belonging to Hindu religion and his father is Sangeetha Rao. The family of the parents of the 9th respondent and his ancestors are Hindu Malas. The 9th respondent never followed Christian faith and he was never Baptized for conversion to Christianity and he is not a convert. It is also averred that even before the Mandal Revenue Officer, Bapatla issued Caste Certificate to the 9th respondent in August 2005, the Mandal Revenue Officer, Mangalagiri issued Caste certificate to him as belonging to Hindu Mala according to law in 2004 after due enquiry as per the procedure under the A.P. Regulation of Issuance of Community Certificate Act 1993. It is further stated that Peda Vadlapudi village in Mangalagiri Mandal is the place of birth of the 9th respondent and it is his parents village and a specific stand had been taken that he had not committed any fraud or misrepresented to the Mandal Revenue Officer, Bapatla for issuance of Caste certificate for the purpose of Municipal election. Further it is stated that the 9th respondent can only sign in English but he cannot read and write. Further it is stated that the law of election is a self contained procedure under the Municipal Act and the

procedure for conduct of selection is clearly and unambiguously laid down as per Section 343-Z of the Act read with the Rules of A.P. Municipalities (Election) Disputes Rules 1967 and any election can only be called in question by Election Petition and it prohibits circumventing the law and procedure. The petitioners ought to have availed the law available under special statute. The petitioners without availing the same cannot invoke the jurisdiction of this Court. It is further stated that if the issue of Caste certificate is wrong it can be questioned as per law laid down in Section 5 of A.P. (S.Cs., S.Ts., and B.Cs.) Regulation of Issuance of Community Certificates Act 1993 before the District Collector and if the certificate is cancelled the membership of the elected councilor ceases and admittedly the petitioners contended that they had taken proceedings for cancellation and the same is pending and therefore the present petition for issuance of writ of quo warranto is premature and circumventing the law laid down. The petitioners have alternative remedies and without exhausting the same they had moved the extraordinary jurisdiction of this Court. Thus specific stand is taken that the 9th respondent had not played any fraud and certain avermets are made in relation to the opposition publicity in media and television and other aspects.

Contentions in nutshell:

-

10. **<u>Submission of Sri Ravindranath Reddy :</u>** Sri Ravindranath Reddy, the learned Counsel representing the writ petitioners had explained the essentials to be satisfied in case of issuance of writ of quo warratnto and also would explain that petitioners have *locus standi* to question the holding of the respective offices by the 9th respondent claiming to be belonging to S.C. category. The learned Counsel would contend that though in a way public interest also is involved, no such objection had been taken even in the counter affidavit. The learned Counsel also would contend that in cases of this nature, the gravity of fraud and the gravity of illegality may have to be considered and here is a case of the 9th respondent usurping the public office, the office of the Councillor of the 8th Ward reserved for S.Cs. and also that of the Chairman and the Chairperson of the Municipality in question reserved for S.C. category. The learned Counsel also had taken this Court through the contents of the affidavit filed in support of the Writ Petition, the respective counter affidavits and further would maintain after pointing out to the relevant material placed before this Court that from service records it is clear that the 9th respondent belongs to B.C. 'C' category. There cannot be any dispute or controversy relating to this aspect. The fact that the 9th respondent had been in service and he had retired from service these aspects are not in controversy.

The Counsel also would submit that this is a typical case of infraction of law and playing fraud on the Constitution by usurping the office on the strength of false caste certificates. The mere fact that certain representations were made or the mere fact that certain alternative remedies are available would not be of any consequence at all inasmuch as these aspects need not be necessarily come in the way of this Court in issuing a writ of quo warranto if the Court is otherwise satisfied on the material available on record that in fact there was play of fraud on the Constitutional benefits. The Counsel also would submit that there is no question of laches in approaching this Court since every day's continuance in the office would constitute a cause of action. The hardship or otherwise which would be caused resulted as a consequence of an order which may be made by the Court need not be seriously considered in the light of the gravity of fraud played by the 9th respondent. The learned Counsel in all fairness would submit that it is true that at present the election cannot be challenged before the appropriate Election Tribunals but that by itself cannot be a ground to refuse this extraordinary relief under Article 226 of the Constitution of India, especially in the light of the material placed before this Court. The learned Counsel also had drawn the attention of this Court to the proceedings under the Right to Information Act 2005 and how the concerned

authorities are reluctant even in furnishing the information for the purpose of protecting to the 9th respondent for reasons best known to them. The learned Counsel also would submit that inasmuch as the counter affidavits had been filed by almost all the contesting respondents, the Writ Petition to be disposed of finally. Further, the learned Counsel would maintain that the source of securing the documents is being raised as a question and this question need not detain this Court for the reason that when documents are produced before this Court, unless there is specific denial, such documents may have to be looked into and appropriate orders to be passed. The learned Counsel also placed reliance on certain decisions.

11. <u>Submissions of Government Pleader for Social Welfare :</u> The learned Government Pleader for Social Welfare had taken this Court through the contents of the counter affidavit filed by the 7th respondent and would initially submit that though it is not specified in the affidavit that the Writ Petition is being filed as a public interest litigation, in fact the same is by way of public interest litigation. The learned Counsel also made an attempt to convince this Court that this matter may have to go before the appropriate Division Bench. While elaborating his submissions, the learned Government Pleader would maintain that locus standi of the petitioners had not been

explained and how they are aggrieved of the 9th respondent occupying the respective offices also had not been explained. The learned Counsel also would submit that unless the caste certificate is duly cancelled in accordance with the procedure and the election is set aside by the competent Election Tribunal in accordance with law till then, there is no question of issuance of a writ of the nature prayed for by the writ petitioners.

12. **Submissions of Sri Prabhakar Rao :** Sri Prabhakar Rao the learned Counsel representing the 2nd respondent would submit that the role of the 2nd respondent is very limited, but however would point out that unless and until the procedure under the A.P. S.C. S.C. B.C.s (Regulation of Issue of Community) Certificates Act 1993 and the Rules framed thereunder are followed, till then it cannot be said that the 9th respondent is an usurper. The learned Counsel also would submit that when alternative remedies are available even as stated by the writ petitioners, writ of quo warranto not to be issued. The learned Counsel also would submit that unless the election is set aside or the caste certificate is cancelled, the 9th respondent cannot be disqualified straightaway by the writ Court and hence the writ prayed for cannot be issued. While concluding the submissions, the Counsel also would maintain that it may be that the B.C. certificate may be correct or it may be that S.C.

certificate may be correct and at this stage this disputed question cannot be gone into by the writ Court.

13. **Submissions of Sri Nageswar Reddy :** Sri Nageswar Reddy, the learned Standing Counsel representing the 6th respondent had taken this Court through the relevant portions of the counter affidavit and also had drawn the attention of this Court to the relevant provisions of A.P. Municipalities Act 1965 and also the relevant Constitutional provisions and further point out to certain Rules framed under the A.P. Municipalities Act 1965 and would maintain that in the light of the Constitutional scheme and also the statutory scheme, it is clear that the petitioners are having an effective alternative remedy and hence this Court not to interfere by issuance of the writ prayed for.

14. **Submissions of Sri Ravi Shanker Jandhyala :** Sri Ravi Shanker Jandhyala, the learned Counsel representing the 9th respondent had taken this Court through the respective counter affidavits filed by the contesting respondents and also the affidavit filed in support of the Writ Petition and had pointed out to the relevant paras and would maintain that in the light of the facts it is clear that the 1st petitioner-Association already had initiated some action and alternative remedies had been invoked both in relation to the cancellation of the caste certificate and also in relation to

the getting of further information. The learned Counsel also would contend that action on criminal side also had been initiated. Hence these are all disputed questions of fact which may have to be decided at the appropriate stage. The learned Counsel also would contend that how the 1st petitioner-Association or Society is aggrieved of is not explained at all. While further making his submissions, the Counsel would maintain that there is no relief prayed for relating to the cancellation of the caste certificate as such. The internal correspondence cannot be relied upon. Even otherwise, the source of securing such correspondence may have to be explained and in the absence of the same, the same cannot be looked into. The Counsel also made elaborate submissions in relation to the *locus standi* of the writ petitioners, alternative remedies and also the other proceedings which had been already initiated and in the light of the same, the Counsel would maintain that it would not be just and proper to express any opinion by this Court at this stage and the same to be left to the concerned so that appropriate further action may be taken in this regard.

15. <u>Relevant material papers :</u>

SERVICE ROLL
OPERATING SUBORDINATE SERVICE

Name (in full) : *Kurapati Maria Das*

Father's Name : *K.Sangeetha Rao*

Race : *Indian, Christian, Mala*

Residence : *Pedavadlapudi, Guntur Tq.*

Date of Birth as : *1-7-1945 (First July forty five) per school certificate*

Education and other Qualification (if any) : *Passed Vth Class as per true copy of P.S.S.L.E. Boys School, Pedavadlapudi certificate under Ad.No.109*

Personal Marks of Identification : *1. One mole on the left chest 1" from nipple 2. One small mole on the chest 6" from the throat*

Certified that the finger prints below have been taken in my presence and under any superintendence from the left hand of Sri K.Maria Das whose services are entered in this Roll.

Signature of the Individual *Sd/- (Kurapati Maria Das)*

Sd/-
Signature of Asst. Engineer

***

O&M Seniority List as on 31-3-2004
Southern Power Distribution Company of Andhra Pradesh Limited
Operation Division – Tenali
Seniority List of Assistant Lineman's to end of 31-3-2004

Sl. No.	*Name of the incumbent*	*Caste*	*Date of Birth*	*Educational qualifications*	*Date of 1st Appoint-ment*
1	*2*	*3*	*4*	*5*	*6*
9.	*Kurapati Maria Das*	*B.C.-C*	*01-07-45*	*V Passed*	*19-06-77 FN*

Date of joining in the present cadre	*Date of Regu-larisation in the present cadre*	*Date of completion of probation*	*Remarks*
7	*8*	*9*	*10*
09-12-91 FN	*09-12-91 FN*	*03-12-92 AN*	*Retired on 31-06-2003 AN*

***

ANNEXURE-III
FORM OF CASTE CERTIFICATE

This is to certify that the claim of Sri Kurapati Mariya Das s/o.K.Sangeetha Rao of village Pedavadlapudi, Mandal Mangalagiri in the District of Guntur of the State of A.P. has been verified as per the procedure laid down and he belongs to S.C.-C Hindu-Mala caste/community which is recognized as Scheduled Caste under The Constitution (Scheduled Castes) Order, 1950, The Constitution (Scheduled Tribes) Order,1950, G.O.Ms.No.1793, Education, Dated 23-8-1970 as amended from time to time (As amended by the Scheduled Castes and Scheduled Tribes lists (Modification Order 1956)the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1976).

Sri Kurapati Mariyadasu and his family ordinarily resides in Village/Town Bapatla of Guntur District/Division of the State of Andhra Pradesh of India.

Signature

Designation Mandal Revenue Officer

Office seal

***

Mandal Revenue Office,

Bapatla
Dated : 3-5-2006

Special Register No.II/2006/C

To
Sri M.Jaya Rao,
General Secretary,

Dr.Ambedkar Seva Samajam,
Bapatla.

With reference to your request U/Sec.6 of Right to Information Act 2005 for providing information as to the Caste status of Sri Kurapati Mariyadas, Chairman, Bapatla Municipality and granting of a certified copy of the Caste Certificate issued to him during August 2005, it is hereby informed that the said K.Mariyadas, when issued a notice under Section 11(1) of the Act, filed written reply against disclosure of the said information.

Keeping in view the reply, it is felt that the disclosure of caste status would cause unwarranted invasion of the individual and therefore hereby informed that there is no obligation to give the same, as required, unless appellate authority is satisfied that the larger public interest justifies the disclosure of such information.

Sd/-
Mandal Revenue Officer,
Bapatla

***

SOUTHERN POWER DISTRIBUTION COMPANY OF A.P. LIMITED

From
Public Information Officer &
Divisional Engineer/Technical Secretary,
APSPDCL,
Seva
Guntur.

To
Sri M.Jaya Rao,
General
Dr.B.R.Ambedkar
Sangham,
Bapatla.

Lr.No.DE/T/LDC/I-ACT 2005/F.No.13/D.No.1052/06 dated

9/5/06

Sir,

Sub:- Elecy-Opn-Circle-Guntur – Certified copies of the Service Register and all the particulars of the retired employee Sri K.Mariadas who was retired as ALM – Furnishing report – Reg.

Ref:- Your letter dated 19-4-06.

***

Adverting to your letter cited under reference, the following points are furnished hereunder.

1. *The information could not be furnished as per Section 8(j) of Right to Information Act 2005.*
2. *As per Section 11(1) of Right to Information Act 2005, the consent of Sri K.Maria das, retired ALM was requested for disclosing the information pertaining to him. He has furnished his reply stating not to disclose the information pertaining to him to anybody without his consent.*

Under the above circumstances the information requested by you under Right to Information Act 2005 could not be furnished.

In this regard, you can prefer your appeal against this rejection at any time to the appellate authority. The address of the appellate authority is Superintending Engineer/Operation/APSPDCL, 4/7, Brodipet, Guntur.

This is for favour of information.

Yours sincerely,
Sd/-
Public Information Officer &
Divisional Engineer/Technical
Circle Office, Guntur.

***

Rc.No.590/06/D *Sub-Collector's Office, Tenali*

Dt.11-05-2006

ENDORSEMENT

***Sub:**- Right to Information Act 2005- appeal filed against on reply*
said to be given by Mandal Revenue Officer, Bapatla document called for – regarding.

***Ref:**- 01. A/o.Sri M.Jaya Rao, General Secretary Dr.Ambedkar*
Seva Samajam, Bapatla.

***

With reference to the appeal of Sri M.Jaya Rao, General Secretary, Dr.Ambedkar Seva Samajam, Bapatla regarding non-supply of certified copies of certain documents by Mandal Revenue Officer, Bapatla the appellant is hereby informed to produce copy of the reply said to be given by the Mandal Revenue Officer, Bapatla in his reference Special Register No.01/06, dt.3-05-2006 for taking further action in the matter.

Sd/- I.Venkateswara Reddy
Revenue Divisional Officer,
Tenali.

***

Dr.AMBEDKAR SEVA SAMAJAM
Regd.No.99/1981
Ambedkar Bhavan, Akberpet, Bapatla-522101, Guntur Dt. (A.P.)

C.Sobhan Kumar, M.A. M.Jaya Rao D.Syam Babu, B.Sc.,B.Ed.
President General Secretary Treasurer

Date : 23-5-2006
Bapatla

To
The Superintendent Electrical Engineer,
Operations A.P.S.P.D.C.L.
Guntur.

Respected Sir,

Sub:-Request for certified copy of the service register and all the particulars of the Retd. Employee Sri Maria Das who was retired as (Asst. line man) on 31-06-2003 – Submission of Representation – Reg.

Ref: Right to Information Act 2005

***

1. While inviting the kind personal attention to the subject and reference cited above, it is requested to furnish the certified copy of the following documents pertaining to Sri K.Maria Das who has worked as Asst. line man and retired on 31-06-2003 from your Department which is available in you're A.P.S.P.D.C.L. Guntur.

(i) Service particulars of Sri K.Maria Das (A) Educational Qualification at the time of joining (B) Caste and Community marked I the Service Register.

(ii) Conduct and character of Sri K.Maria Das during his service and any other particulars mentioned in the Register.

2. It is requested to kindly furnish the certified copy of the above said document as expeditiously as possible keeping in view of the spirit behind and provisions in the Right to Information Act 2005. An amount of Rs.10/- D.D. is paid herewith towards fee for application and supply of certified copy of the above said document.

Thanking you,

Yours sincerely,
Sd/-
(M. JAYA RAO)

***

SOUTHERN POWER DISTRIBUTION COMPANY OF A.P. LIMITED

From
Superintending Engineer,
Operation Circle,
APSPDCL,
Sangham
Guntur

To
Sri M.Jaya Rao
General Secretary,
Dr.B.R.Ambedkar Seva

Bapatla.

Lr.No.SE/O/GNT/Peshi/D.No.94/06, dated 16-06-06

Sir,

Sub: Elecy-Opn-Circle-Guntur-Certified copies of the Service
Register and all the particulars of the retired employee Sri K.Mariadas who was retired as ALM – Furnishing report – Reg.

Ref: Your letter dated 23-5-06.

***

Adverting to your letter cited under reference, the following points are furnished here under :

3) The information could not be furnished as per the Section 8(j) of Right to Information Act 2005.

4) As per the Section 11(1) of Right to Information Act – 2005, the consent of Sri K.Maria das, retired ALM was requested for disclosing the information pertaining to him. He has furnished his reply stating not to disclose the information pertaining to him to anybody without his consent.

Under the above circumstances, the information requested by you under Right to Information Act – 2005 could not be furnished.

It is to inform you that there is no need to pay application fee for appeal to appellate authority as per

Information Act – 2005. Hence, the Demand Draft received from you for Rs.10/- bearing No.600727 dated 20-04-06 of State Bank of India is herewith returned. It is to inform that you may prefer an appeal to the appellate authority over my decision. The appellate authority is the State Information Commissioner, Hyderabad.

This is for favour of information.

Yours sincerely,

Sd/-
Superintending Engineer,
Operation Circle,
Guntur.

16. <u>Relevant Constitutional provisions :</u>

Article 243-K : (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

Article 243-ZA: (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243K.

(2) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

Article 243-ZG: Notwithstanding anything in this Constitution, -

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to the made article 243ZA shall not be called in question in any court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

Article 341 : The President may, with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts

of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe, or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

17. Relevant statutory provisions :

Section 10 of A.P. Municipalities Act:
Division of municipalities into wards, etc., for the purpose of election of members:-

(1) For the purpose of election of members to a council, the Government may, after consulting the council, by notification in the Andhra Pradesh Gazette, -

(a) divide the municipality into as many as single member wards as the number of members notified under Section 5.

(b) determine the wards in which the seats, if any, reserved under sub-section (1) of Section 8 shall be set apart; and

(c) declare for whom such seats are reserved.

(2) **** (omitted by Act 33 of 1986)

(3) All the elector of a ward may be entitled to vote at an election to any seat in the ward whether reserved or not.

(3-A) Where a notification issued under sub-section (1) results in the material alteration of the existing division of a municipality into wards, the Government may direct that the alteration shall take effect from the date of next ordinary

elections.

(3-B) Where any local area within the jurisdiction of any other local authority is included in a Municipality under Section 3 the local area shall be added to such adjoining ward or wards of the municipality, as the Government may direct.

(4) When a new ward is formed or when an existing ward is abolished, the election authority shall, with the approval of the Government, determine –

(a) the ward which each elected Member then on the council shall be deemed to represent; and

(b) the ward or wards in which elections shall be held to fill the vacancies, if any, in the council.

Section 16 of A.P. Municipalities Act :

Disqualification of members:-

(1) Subject to the provisions of Section 17, a member shall cease to hold his office, if he-

(a) is sentenced by a Criminal Court to such punishment and for such offence as is described in sub-section (1) of Section 15;

(b) becomes of unsound mind and stands so declared by a competent Court;

(c) is a deaf-mute or is suffering from leprosy;

(d) applies to be adjudicated or is adjudicated an insolvent;

(e) subject to the proviso to Clause (c) of sub-section (2) of Section 15, acquires any interest in any subsisting contract made with, or work being done for, the council except as a share-holder, other than a director, in a company.

(f) is employed as a paid legal practitioner on behalf of the council or legal practitioner against the council;

(g) is appointed as an officer or servant under this Act or as an honorary magistrate for the municipal town;

(h) accepts employment under or becomes the official subordinate of any other member;

(i) ceases to reside for a period of more than six months in the municipality or within two kilometers from the outer limits therefrom;

(j) fails to pray arrears of any kind due by him, otherwise than in a fiduciary capacity, to the municipality within three months after a bill or notice has been served upon him under this Act, or where, in the case of any arrears, this Act does not require the service of any bill or notice, within three months after a notice requiring payment of the arrears, which notice is shall be the duty of the Commissioner to serve at the earliest possible date, has been duly served upon him by the Commissioner;

(k) absents himself from the meetings of the council for a period of three consecutive months reckoned from the date of the commencement of his term of office, or of the last meeting which he attended, or if his restoration to office as member under sub-section (3) as the case may be, or if within the said period less than three ordinary meetings have been held absents himself from three consecutive ordinary meetings held after the said date.

Provided that in the case of a woman member a period of not more than two months at a time shall be excluded in reckoning the period of absence aforesaid if, for reasons of physical disability due to advanced stage of pregnancy and of delivery, such member absents herself from meetings of the council after giving a written intimation to the Commissioner of the date from which she would be absent:

Provided further that no meeting from which a member absented himself shall be counted against

him under this clause if notice of that meeting was not duly served on him.

Provided also that nothing in this clause shall apply to an ex officio councilor.

Explanation: For the purpose of this clause –

(i) 'ordinary meeting' shall mean a meeting referred to in sub-rule (1) of Rule 2 in Schedule I.

(ii) where a meeting other than an ordinary meeting intervenes between one ordinary meeting and another ordinary meeting, those two ordinary meetings shall be registered as being consecutive to each other.

(2) Where a person ceases to be a councillor under Clause (a) of sub-section (1) or under Section 19, he shall be resorted to office for such portion of the period for which he was elected as may remain unexpired at the date of such restoration if and when the sentence or order is annulled on appeal or revision and any person entitled to fill the vacancy in the interim shall on such restoration, vacate office.

(3) Where a person ceases to be a councilor under Clause (k) of sub-section (1), the Commissioner shall at once intimate the fact in writing to such person and report the same to the council at its next meeting. If such person applies for restoration to the council on or before the date of its next meeting or within fifteen days of the receipt by him of such intimation; the council may at the meeting next after the receipt of such application, or suo motu restore him to the office of member.

Section 5 of The Andhra Pradesh (SC, ST & BCs) Regulation of Issue of Community Certificates Act 1993:

Cancellation of the false Community Certificate:- (1) Where, before or after the commencement of this Act a person not belonging to any of the Scheduled Castes,

Scheduled Tribes or Backward Classes has obtained a false Community Certificate the effect that either himself or his children belongs to such Castes, Tribes or Classes, the District Collector may either suo motu or on a written complaint by any person, call for the record and enquire into the correctness of such certificate and if he is of the opinion that the certificate was obtained fraudulently, he shall, by notification, cancel the certificate after giving the person concerned an opportunity of making a representation.

Provided that where an enquiry into the genuineness of a community certificate issued prior to the commencement of this Act has commenced and is pending at such commencement, the record thereof shall be transferred by the concerned authority to the District Collector and he shall continue the enquiry and conclude the same under this sub-Section.

(2) The powers of the nature referred to in sub-section (1) may also be exercised by the Government.

Section 12 of The Andhra Pradesh (SCs, STs & BCs) Regulation of Issue of Community Certificates Act 1993:

Penalty for securing on appointment of election to political offices etc., on the basis of false community certificate:-

(1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes secured an appointment in Government or other institutions referred to in Section 11 against the posts reserved for the Scheduled Castes, Scheduled Tribes or Backward Classes or is elected to any of the elective offices of any local authority or cooperative society against the offices reserved for such Castes, Tribes or Classes on the basis of a false community certificate, shall on conviction be punishable with rigorous imprisonment for a term which shall not be less

than six months but which may extend upto two years and with fine which shall not be less than one thousand rupees but which may extend upto five thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the Judgment, impose a sentence of imprisonment for a less term or fine.

(2) Whoever not being a person belonging to a Scheduled Tribe secures any benefit or protection intended for a member of a Scheduled Tribe under a notification, direction or regulation made under the Fifth Schedule to the Constitution of India or under any other law in force in the Scheduled Areas on the basis of a false community certificate shall, on conviction be punishable with rigorous imprisonment for a term shall which shall not be less than six months but which may extend upto two years and with fine which shall not be less than one thousand rupees but which may extend upto five thousand rupees.

Section 8 of Right to Information Act :
Exemption from disclosure of information:-

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, –

a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

b) information which has been expressly forbidden to be published by any Court of law or Tribunal or the disclosure of which may constitute contempt of court;

c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

d) information including commercial confidence, trade secrets or of which would harm the competitive position of a third party, unless the competent authority is satisfied that large public interest warrants the disclosure of such information;

e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

f) information received in confidence from foreign Government;

g) information, the disclosure of which would endanger the life or physical safety of any person or identity the source of information or assistance given in confidence for law enforcement or security purposes;

h) information which would impede the process of investigation or apprehension or prosecution of offenders;

i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this Section shall not be disclosed;

j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would

cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-Section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under Section 6 shall be provided to any person making a request under that Section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

Section 11 of Right to Information Act :

Third Party Information:-

1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated

as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in to the interests of such third party.

2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

3) Notwithstanding anything contained in Section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after rceipt of the request under Section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under Section 19 against the decision.

Section 19 of Right to Information Act :
Appeal:-

1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of Section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within third days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer, as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under Section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission as the case may be, may

admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

5) If any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

7) The decision of the Central Information Commission or State information Commission, as the case may be, shall be binding.

8) In its decision, the Central Information Commission or State information Commission, as the case may be, has the power to

   a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including –

      i) by providing access to information, if so requested, in a particular form;

      ii) by appointing Central Public Information Officer or State Public Information Officer, as the case may be;

iii) by publishing certain information or categories of information;

iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

v) by enhancing the provision of training on the right to information for its officials;

vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of Section 4;

b) require the public authority to compensate the complainant for any loss or other detriment suffered;

c) impose any of the penalties provided under this Act;

d) reject the application.

9) The Central Information Commission or State Information Commission as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

Rule 10 of Rules for Decision of Election Disputes (1967) under A.P. Municipalities Act 1965, reads as hereunder :

If in the opinion of the Election Tribunal –

(a) a returned candidate, his agent or any other person with the connivance of such candidate or agent, has committed or abated the commission of any election offence falling under Section 18 of the Act or under Chapter IX-A of the Indian Penal Code, or

(b) the election of a returned candidate has been procured or induced or the result of the election has

been materially affected by any of the following corrupt practices :-

(i) any election offence falling under Section 18, of the Act or under Chapter IX-A of the Indian Penal Code when committed by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent;

(ii) any payment or promise of payment to any person whomsoever on account of the conveyance of any elector to or from any place for the purpose of recording his vote;

(iii) The hiring, employment, borrowing or using for the purposes of the election of any boat, vehicle or animal usually kept for letting on hire or for the conveyance or passengers by hire;

Provided that any elector may hire any boat, vehicle or animal or use any boat, vehicle or animal which is his own property to convey himself to/or from the place where the vote is recorded"; and

(iv) the hiring, using or letting, as a committee-room or for the purpose of any meeting to which electors are admitted of any building, room or other place where intoxicating liquor is sold to the public; or

(c) the result of the election has been materially affected by any irregularity in respect of a nomination paper or by the improper reception or refusal of a nomination paper or vote or by any non-compliance with the provisions of the Act or the Rules made thereunder.

The election of such returned candidate shall be void.

18. <u>Decisions cited by the parties:-</u>

Speyer and Respondent Vs. Cassel [1]***;***

Sonu Sampat Shewale Vs. Jalagaon Borough

Municipality [2];

Kasinath Vs. State of Bombay [3];

Bhairulal Vs. State of Bombay [4];

Venkatayya Vs. Sivarama Prasad [5];

Calcutta Gas Company (Prop.) Ltd., Vs. State of West Bengal [6];

Khurai Municipality Vs. Kamal Kumar [7];

Baij Nath Vs. State of U.P. [8];

Venkateswara Rao Vs. Government of Andhra Pradesh [9];

Century Spinning & Manufacturing Co. VS. Ulhasnagar Municipality [10];

Bar Council of Delhi Vs. Surjeet Singh [11];

Pushpadevi M.Jatia Vs. M.L.Wadhawan [12];

Kashinath G. Jalmi Vs. The Speaker [13];

W.P.No.6688 of 1996 [14];

District Collector, Ranga Reddy Vs. K.Narsing Rao [15];

Satrucharla Vijaya Rama Raju Vs. Nimmaka Jaya Raju [16];

E.V.Chinnaiah Vs. State of Andhra Pradesh [17];

Peramsetty Sri Rama Prasad Vs. Election Officer, Naidupet Mandal Parishad [18];

Pappu Venkata Rao Vs. Commissioner of Endowments [19];

Nimmaka Jayaraju Vs. Hon'ble Chief Minister [20]***;***
High Court of Gujarat Vs. Gujarat Kishan Mazdoor Panchayat [21]***;*** and

M. Nagaraj and others Vs. Union of India and others [22]

19. VIEWS OF THIS COURT:-

The factual matrix is as well reflected in the pleadings already referred to supra. The main grievance of the petitioners is that the 9th respondent filed nomination for the election as a Member of the Council to 8th Ward claiming himself as a candidate belonging to Scheduled Caste by describing his caste as Mala and got elected and also further occupied the Office of the Chairperson of the Bapatla Municipal Council claiming to be falling under the same category, though, in fact, he belongs to Backward Class (Category-C) i.e., Mala converted to Christianity. Specific stand is taken for the past two generations his family has been professing Christianity and on that basis he had obtained employment in the then A.P.State Electricity Board (presently Southern Power Distribution Company of A.P.Ltd) and also obtained several benefits from the said service. The relevant documents – the Xerox copy of the Service Roll of the 9th respondent and the Seniority List of Assistant Linemen of Tenali Division, are produced before this Court. In substance, the stand taken by the respondents in the

respective counter affidavits is that the petitioners have been pursuing the other remedies and even otherwise the procedure as contemplated by the Andhra Pradesh (SC, ST BCs) Regulation of Issue of Community Certificates Act, 1993 to be followed and unless the said Certificate is duly cancelled in accordance with law or in the alternative unless the election is questioned by way of Election Petition and duly set aside, the Writ of Quo Warranto as such not to be issued by this Court. Incidentally, the criminal proceedings in progress also had been referred to.

20. The counter affidavit of the 9th respondent and the contents thereof also in brief already had been referred to supra. Specific stand is taken by the 9th respondent that he was born at Peda Vadlapudi village of Mangalagiri Mandal of Guntur District in the family of Caste Mala belonging to Hindu religion and his father is Sangeetha Rao and the family of his parents and their ancestors are Hindu Malas and he never followed Christian faith and he was never Baptized for conversion to Christianity and he is not a convert Christian. The Caste Certificates issued by the Mandal Revenue Officer, Bapatla and Mandal Revenue Officer, Mangalagiri, as per the procedure under the Andhra Pradesh (SC, ST BCs) Regulation of Issue of Community Certificates Act, 1993 also had been referred to. In para 3 of the counter affidavit while denying the other allegations, it is

averred *"I submit except my retirement the other allegations are incorrect and not true for the reasons stated hereinafter."* The Service Roll Operating Subordinate Service of the 9th respondent showing the Race as Indian, Christian, Mala and entry No.9 in the Seniority List of Assistant Linemen to the end of 31-3-2004 in the Southern Power Distribution Company of Andhra Pradesh Limited, Operation Division, Tenali showing 9th respondent as BC-C under Caste column are produced before this Court. As already referred to supra, retiring from the service is not seriously disputed though the other allegations are denied in general though not in specific unequivocal terms. It is true that the Caste Certificates also are placed before this Court as material papers. W.P.M.P.No.23998/2006 which is ordered by this Court is in relation to the reception of a copy of the report of the Inspector of Police, CID, RCIU, Guntur dated 21-8-2006. The said report is an elaborate report addressed to the Additional Director General of Police, CID, A.P., Hyderabad submitted by the Inspector of Police, CID, RCIU, Guntur and it appears it is in relation to the submission of Enquiry Report for legal action against 9th respondent in relation to the production of false S.C. Community Certificate for Election purpose. Though several aspects had been referred to in the said report, this is an internal correspondence in relation to the Criminal

Investigation and in the light of the same, though in view of the relevancy it is received, reliance cannot be placed on the contents thereof. Several Press Reports also had been relied upon and these being more hearsay in nature, the contents thereof need no serious consideration at the hands of this Court. However, the representations made by M/s.Dr.Ambedkar Seva Samajam dt.22-3-2006 to the Superintendent of Police, Police Headquarters, Superintendent of Police Office, Guntur and dt.14-4-2006 to the S.H.O., Town Police Station, Bapatla, had been placed before this Court. The serious attempts made to get the information and the communications and the orders made in relation thereto also are placed before this Court. Further the communication from the Secretary, A.P.State Commission for SCs & STs., addressed to the District Collector, Guntur, the Superintendent of Police, Guntur District, and Inspector General of Police, CID, PCR Cell, Saifabad, Hyderabad, in pursuance of the representation made by the 1st petitioner in Reference.No.S1/741/Guntur/2006, dt. 19-4-2006 also are placed before this Court. The other representations made and the appeals filed also are placed before this Court. This is a case where the 1st petitioner society along with the other petitioners are complaining about the usurping of Office of the Council of the 8th Ward and the Chairperson of

the Bapatla Municipal Council by a person falling under the Non-Scheduled Caste Category though the said Offices are reserved to Scheduled Caste category. Several of the facts are not in controversy except the sole question relating to the Caste of the 9th respondent, whether he would fall under the Scheduled Caste category or BC-C category i.e., Hindu Mala or Mala convert Christian. When favoured classes of reservation are disfavoured by the acts of usurpation by depriving them of the benefit of reservation conferred on them, the very constitutional object of reservation aimed at the deserved in its vigor and vitality would be defeated. This is the arena where the Constitutional Courts always have been jealously protecting such trespass or encroachment. The procedural wrangles created by ordinary Legislations whether to come in the way of this Court while issuing the prerogative writs in the event of this Court being satisfied about the play of fraud on the Constitution. If a class is similar to Scheduled Caste, it may be a case for inclusion, but it cannot be said that there cannot be any other Backward Class. Scheduled Castes and Scheduled Tribes are evidently backward but category of Backward Classes is wider and there may be Caste and occupational roots who may be backward. It is pertinent to note that entering into service under S.C. category would be more preferable than as a Converted Christian and this factor also may have to

be taken into consideration while evaluating the events in the life sketch of the 9th respondent in relation to Caste episode. When a typical case of grave Constitutional fraud relating to Caste, if duly brought to the notice of the Constitutional Courts, whether these Courts to decline to interfere on the ground of the alternative remedies or the other like grounds or whether these Courts are raise to the occasion to protect such rights of the reserved categories. Can this Court shed its duty on the simple ground that this is a disputed question of fact and the remedies available to the petitioners would be elsewhere, either by way of Election Petition or under the Andhra Pradesh (SCs, STs & BCs) Regulation of Issue of Community Certificates Act, 1993 or by way of prosecution in relation to the specified offices and not by invoking the jurisdiction of this Court under Article 226 of the Constitution of India? Policy of reservation aimed at benefiting the specific reserved classes to be implemented in its true spirit. Play of fraud on the same depriving those classes of their legitimate rights always to be deprecated. When fraud is well established the relief cannot be negatived on the ground that the same may fall under the question of fact or further probe may be necessary or certain procedural obstacles may operate as hurdles in granting the relief. In the considered opinion of this Court, this may amount to doing violence to the spirit of the Constitution and

defeating the provisions of the Constitution and the very Constitutional objectives as well. Gravity of the issue relating to the caste and the impact of the established play of fraud may have to weigh in such a case and the same cannot be thrown away on the ground of alternative remedy.

21. Submissions at length were made on the aspect of *locus standi,* alternative remedy, non-explanation of the source of getting the documents and the like. There cannot be any serious dispute in relation to the fact that the 1st petitioner has been seriously agitating this question or controversy on all fronts making serious attempts to get more and more information, making different representations, setting the criminal law into motion, making serious attempts to show that the Certificate in question is a false Certificate and further there cannot be any controversy on the aspect that the petitioners had a remedy by way Election Petition and the same was not availed and the petitioners also have a remedy under the provisions of the Andhra Pradesh (SCs, STs & BCs) Regulation of Issue of Community Certificates Act, 1993 to question the Caste Certificate. Submissions at length were made by the Counsel representing the respective respondents that in the light of these remedies and also inasmuch as the petitioners cannot be said to be the aggrieved persons, they have no *locus standi* at all to maintain this action and at any rate, a

Writ of Quo Warranto is not proper remedy. I n ***Sonu Sampat Shewale's case (referred 2 supra)*** the Bombay High Court observed :

> *"If the appointment of an Officer is illegal, everyday that he acts in that Office a fresh cause of action arises; there can, therefore, be no question of delay in presenting a petition for a Writ of Quo Warranto in which his very right to act in such responsible post has been questioned."*

I n ***Pappu Venkata Rao's case (referred 19 supra***) a learned Judge of this Court while dealing with *locus standi* to seek a writ of quo warranto observed as hereunder:-

> *"Writ in the nature of a Quo Warranto would lie even at the instance of a realtor, who has no personal interest in the matter. It is open for a private individual to bring to the notice of the court that a person who is disqualified to hold an office is still holding it. A person who is not legally entitled to hold the office should not be permitted to hold it. A Division Bench of this Court in Mocherla Venkataraya Sarma v. Y.Sivarama Prasad (AIR 1961 A.P. 250) held :*
>
> *"….. At the outset we must say that we cannot accede to the theory propounded on behalf of the Government that the realtor having no personal interest in the matter could not exhibit this information against the Chairman and the Vice-Chairman. It is argued on behalf of the Government that the petitioner has no locus staid to seek the jurisdiction of the Court for this purpose.*
>
> *In our opinion, an information would lie even according to the instance of a realtor who has no personal interest in the matter. Information in the*

nature of Quo Warranto could be filed in the case of Municipal Corporation or Local Boards on the relation on private parties. It is open to a private individual to bring it to the notice of the Court that a person who is disqualified to hold an office is still holding it. A person who is not legally entitled to hold an office should not be permitted to hold it.

In the words of Tindal C.J., which were extracted with approval by Lord Reading in R.V. Speyer v. R.V. Cassel (1916) 1 KB 595:

"…… this proceedings by information in the nature of quo warranto will be usurping any office, whether created by charter alone, or by the Crown, with the consent of Parliament. Provided the office be of a public nature, and a substantive office, not merely the function or employment of a Deputy or servant held at the will and pleasure of others. The test to be applied is whether there has been usurpation of an office substantive in character that is, an office independent in title."

Therefore it is competent for a voter or a member or any of the local bodies to invoke the jurisdiction of this Court for the issue of information in the nature of quo warranto. Consequently the proceedings could be entertained by this Court for the purpose for which its jurisdiction is invoked."

In ***Calcutta Gas Company (Prop.) Ltd.,'s case (referred 6 supra***) while dealing with the relaxed or modified rule in the case of Writs like Habeas Corpus or Quo Warranto, the Apex Court observed as hereunder:-

"The first question that falls to be considered is whether the appellant has locus standi to file the

petition under Article 226 of the Constitution. The argument of learned Counsel for the respondents is that the appellant was only managing the industry and it had no proprietary right therein and, therefore, it could not maintain the application. Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the Court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. In State of Orissa v. Madan Gopal (1952 S.C.R. 28) : AIR 1952 S.C. 12) this Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Article 226 of the Constitution. In Charanjit Lal Chowdhuri V. Union of India, 1950 S.C.R. 869 : (AIR 1951 S.C. 41), it has been held by this Court that the legal right that can be enforced under Article 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. We do not see any reason why a different principle should apply in the case of a petitioner under Article 226 of the Constitution. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified…..".

In ***Bhairulal's case (referred 4 supra*)** it was held that *the Writ of Quo Warranto is not issued as a matter of right and it is a discretionary relief and the Court has always to ask itself whether under the circumstances of each case the petitioner should be given relief in the nature of quo warranto which he seeks.* In ***Kasinath's case (referred* 3 *supra)*** the Division Bench of the Bombay High Court held that *it is the duty of the Court, as soon as its attention is drawn to the fact that a person who is not qualified is holding a public office, to declare that he is not entitled to that office and to prevent him from acting as such.* A Division Bench of this Court in the decision ***W.P.No.6688/1996 (referred* 1 4 *supra)*** while dealing with a similar case, in relation to election to the Office of Sarpanch of the Gram Panchayat claiming that a particular caste falls under the Backward Class, the learned Division Bench after referring to the decisions on the point, ultimately declared the 5th respondent therein as disqualified from the Office as Sarpanch of the Gram Panchayat and the Election Petition then pending on the file of Court of Munsif Magistrate, Sulurpet, had been closed as no further orders required to be passed. It is true that this is a matter concerned with whether *Ganika* Caste and *Adivelamas* would be one and the same or not. Be that as it may, the principles laid down in relation to issuance of Writ of Quo Warranto in the said

decision are in a way applicable to the facts of the present case too. In the decision ***Peramsetty Sri Rama Prasad (referred 18 supra)*** relying upon ***Bhairulal's case (referred 4 supra)*** it was held that *the Writ of Quo Warranto is a discretionary remedy and the petitioners having an effective alternative remedy by way of Election Petition, Writ Petition not to be maintained.* In the decision ***High Court of Gujarat (referred 21 supra),*** Justice S.B. Sinha observed :

> *"The High Court in exercise of its writ jurisdiction in a matter of the nature of the present case is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto and the jurisdiction of the High Court to issue a writ of quo warranto is a limited one, while issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of a writ of certiorari."*

In the decision ***Khurai Municipality (referred 7 supra)*** it was held by the Apex Court at para-7 as hereunder :

> *"Before us it is contended by Mr.Setalvad on behalf of the Council that an appeal had already been preferred by the respondents against the assessment list and, therefore, they were not entitled to any relief under Article 226 of the Constitution. It is true that the High Court would not ordinarily entertain a petition under Article 226 of the Constitution where an alternative remedy is open to the aggrieved party. Though that is so the High Court has jurisdiction to*

grant relief to such a party if it thinks proper to obtained so in the circumstances of the case. In the present case the High Court has chosen to exercise discretion in favour of the respondents and it would not be right for us to interfere with the exercise of that discretion unless we are satisfied that the action of the High Court was arbitrary or unreasonable. Nothing has been brought to our notice from which it could be inferred that the High Court acted arbitrarily in granting the writ prayed for to the respondents."

In the decision ***Bar Council of Delhi (referred 11 supra)*** it was held by the Apex Court that *where the Electoral roll prepared on the basis of rule which was void and ultra vires, notwithstanding the fact that the petitioners came to challenge election after it was held, they could do so because of gravity of infraction of the law in preparation of the roll.* Reliance also was placed on the decision ***Venkateswara Rao's case (referred 9 supra)*** wherein relying on the decision ***Calcutta Gas Company (Prop.) Ltd. (referred 6 supra)*** it was held :

"A petitioner who seeks to file an application under Article 226 of the Constitution should "ordinarily" be one who has a personal or individual right in the subject matter of the petition. A personal right need not be in respect of a proprietary interest, it can also relate to an interest of a trustee. That apart in exceptional cases, as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even

fiduciary interest in the subject matter thereof."

Certain submissions were made on the ground of delay or latches in approaching the Court. In the decision ***Kashinath G.Jalmi (referred 13 supra)*** while dealing with applicability of doctrine of latches in cases of disqualification of Minister of State and review thereof by the Speaker it was held by the Apex Court as hereunder :-

> *"Where an order of review was passed by the Speaker of the State Legislative Assembly reviewing the earlier order of disqualification of the Chief Minister and two other ministers on the ground of defection, a Writ Petition filed by the Member of Assembly questioning the power of Speaker to review the order of disqualification made under Tenth schedule filed ten months after the date of impugned order was not liable to be dismissed merely on ground of laches, when the alleged usurpation of the public offices, including that of the Chief Minister continued. The exercise of discretion by the Court even where the application is delayed is to be governed by the objective of promoting public interest and good administration; and on that basis it cannot be said that discretion would not be exercise in favour of interference where it is necessary to prevent continuance of usurpation of office or perpetuation of an illegality. It cannot be said in such a case that the oblique motives of the member together with his conduct disentitles him to grant of the relief claimed by such a petition. Any other member of the public, to whom the oblique motives and conduct alleged against the members in the present case could not be*

attributed, could file such a Writ Petition even now for the same relief, since the alleged usurpation of the office was continuing, and this disability on the ground of oblique motives and conduct would not attach to him. This being so, the relief claimed by the member in their Writ Petitions filed in the High Court being in the nature of a class action, without seeking any relief personal to them, should not have been dismissed merely on the ground of laches. The motive or conduct of the members in such a situation can be relevant only for denying them the costs even if their claim succeeds, but it cannot be a justification to refuse to examine the merits of the question raised therein, since that is a matter of public concern and relates to the good governance of the State itself."

In the decision ***Century Spinning & Manufacturing Co. (referred 10 supra)*** the Apex Court observed that *where alternative remedy of civil suit is available, the petitioner not to be relegated to remedy of suit merely because questions of fact are raised.* Strong reliance was placed on the decisions ***Satrucharla Vijaya Rama Raju (referred 16 supra)***, ***E.V.Chinnaiah (referred 17 supra)*** **and** ***Nimmakka Jayaraju (referred 20 supra)***. Certain submissions were made in relation to the source and how the documents had been secured. Reliance was placed on the decision ***Kashinath G.Jalmi (referred 13 supra)*** wherein it was observed by the Apex Court that *if the evidence is relevant, it is admissible irrespective of the method by which the same was obtained*.

22. The authenticity of the Service Records and the Entries produced before this Court cannot be doubted especially in the light of the stand taken by R.9 in the counter affidavit. It is needless to say the counter affidavit of R.9 is not only unsatisfactory but also unclear and appears to have been thought of only to get-over the present problem. This is a case of holding elected office for specified period. The object appears to be to delay these matters so that the term of the respective offices as Councilor and the Chairperson can be successfully competed. Can such an attempt be permitted in the light of the facts and circumstances of the present case and whether there are justifiable grounds either to grant the relief in favour of the petitioners or refuse the relief, in the facts and circumstances of the present case? In the light of the specific stand taken by the 1st petitioner and the other petitioners being the Voters, there cannot be any doubt whatsoever about their *locus standi* to maintain the Writ Petition. In a democratic polity, every person who has a right to contest a particular office may make a grievance of this nature and that too the 1st petitioner, a registered society, is ventilating the grievance that the 9th respondent is the usurper of the offices reserved for the Scheduled Caste category. No further interest or more interest need be established by the 1st petitioner since it is needless to say

that the 1st petitioner would be interested in seeing such Offices to be filled up by only *bona fide* Scheduled Caste persons. It is a typical case where the 9th respondent had been in service for sufficiently a long time and on a careful scrutiny of the material produced before this Court, the Service Records do clearly establish that the 9th respondent belongs to the Convert Christian – Mala. It is needless to say that weight to be given to the Service Records need not be overemphasized by this Court. In the light of the same, the mere assertion that 9th respondent was never baptized and never there was conversion cannot be accepted in a way the doctrine of *estoppel* would be operative against the 9th respondent in the light of the Service Record in relation thereto. When it is clear and categorical that at a particular point of time, during service, 9th respondent was shown to be Convert Christian – Mala, unless it is a case of reconversion and proof thereof, the stand taken by the 9th respondent in the considered opinion of this Court, is an unsustainable stand. In the decision ***M.Nagaraj's case (referred 22 supra)*** while dealing with the concept of Reservation ***S.H. Kapadia J*** of the Apex Court observed :

> *"Reservation as a concept is very wide. Different people understand reservation to mean different things. One view of reservation as a generic concept is that reservation is anti-poverty measure. There is a different view which says that reservation*

is merely providing a right of access and that the it is not a right to redressal. Similarly, affirmative action as a generic concept has a different connotation. Some say that reservation is not a part of affirmative action whereas others say that it is a part of affirmative action".

23. On a careful analysis of the whole material available on record, the following aspects emerged:-

1) The fact that the 9th respondent worked in A.P.State Electricity Board is not in serious dispute. The fact that the he retired from service also is not in serious dispute. The Service Book, the Entries, authenticity thereof also cannot be in serious dispute, especially in the light of the nature of the stand taken by the 9th respondent in the counter affidavit;

2) The Caste Certificates were obtained by the 9th respondent after retirement claiming to be of the Scheduled Caste community;

3) The stand taken by the 9th respondent is not one of reconversion into Hinduism again but the stand is that he was never Baptized and the family continues to be a Hindu family only belonging to Scheduled Caste;

4) It is pertinent to note that the petitioners had taken a specific stand that for about two

generations the family of the 9th respondent had embraced Christianity and continues to have the Christian faith;

5) The conduct of the 9th respondent in seeing that the documents are not furnished as reflected from the orders also would go to show that the stand taken by him is not bona fide; and

6) In the light of the whole material available on record, this is a case of play of fraud on the Constitution depriving the Scheduled Caste category persons from being elected to the respective Offices though the said respective Offices are reserved for the said category.

In the light of the above facts, this Court is of the considered opinion that this is a fit case where the 9th respondent cannot be permitted any longer to occupy the respective offices claiming benefits under the category of Scheduled Caste, taking shelter under the false Scheduled Caste Certificate obtained by him for the purpose of election or otherwise after retirement. On a careful analysis of the whole episode, this is only irresistible conclusion at which this Court can arrive at since no other conclusion is possible to be drawn.

24. **CONCLUSION:-** Thus, in the light of the views

expressed by this Court supra, this Court being satisfied that the conduct of the 9th respondent being nothing short of playing fraud on the Constitution inasmuch as he usurped the Office of the Councilor of 8th Ward and also occupied the Office of the Chairperson of the Bapatla Municipal Council on the strength of the claim of belonging to the Scheduled Caste category, taking into consideration the gravity of illegality committed by the 9th respondent, it is not necessary to drive the writ petitioners to any other forum on the ground of availability of alternative remedy or on the ground that some question of fact is involved and hence the writ petitioners are bound to succeed. Accordingly, Writ Petition is hereby allowed with costs.

Justice P.S.Narayana

21st December, 2006
Note: L.R. Copy to be marked (Yes/No)
am/smr

---

[1] 1916(1) K.B., 595
[2] ILR 1958 Bombay 113
[3] AIR 1954 Bombay 41
[4] AIR 1954 Bombay 116
[5] AIR 1961 A.P., 250
[6] AIR 1962 S.C., 1044
[7] AIR 1965 S.C., 1321
[8] AIR 1965 Allahabad 151
[9] AIR 1966 S.C., 828
[10] AIR 1971 S.C., 1021
[11] AIR 1980 S.C., 1612

[12] 1987 (3) S.C.C., 367

[13] AIR 1993 S.C., 1873

[14] W.P.No.6688 of 1996

[15] 1997 (4) ALT 428 (DB)

[16] 2005 AIR SCW 6197

[17] AIR 2005 S.C., 162

[18] 2006 (5) ALD 366

[19] 2005 (5) ALT 714

[20] 2006 (5) ALT 661

[21] (2003) 4 SCC 712

[22] 2006 (8) SCJ 457